

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Dana Escoffier,

Plaintiff,

-against-

Whole Foods Market Group, Inc.,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 10/12/2023

1:22-cv-06588 (AS) (SDA)

ORDER

STEWART D. AARON, UNITED STATES MAGISTRATE JUDGE:

Following a telephone conference in which counsel for Defendant appeared but the *pro se* Plaintiff failed to appear, it is hereby ORDERED, as follows:

1. No later than Monday, October 16, 2023, Plaintiff shall contact counsel for Defendant to schedule Plaintiff's in-person deposition to be held at Veritext, 7 Times Square, 16th Floor, New York, NY 10036. The deposition shall be held no later than Friday, October 27, 2023.
2. No later than Thursday, October 19, 2023, Defendant may move for sanctions, pursuant to Fed. R. Civ. P. 37(d)(1)(A), based upon Plaintiff's failure to appear at his September 5, 2023 court-ordered deposition. No later than Thursday, October 26, 2023, Defendant may file any opposition.
3. Because Plaintiff's witness, Jessica Nunez, has refused to appear for her deposition (*see* ECF No. 48-2), Plaintiff shall be precluded from offering Ms. Nunez's testimony in the prosecution of this action.

4. No later than Thursday, October 26, 2023, Defendant's witnesses, Justin Ortiz and Yoichi Tsuchimochi, shall respond and/or object to the written deposition questions set forth in ECF No. 50 at PDF pp. 5-11.
5. If Plaintiff fails to timely contact counsel for Defendant and/or fails to appear for his deposition, as set forth in paragraph 1 hereof, the Court shall impose sanctions upon Plaintiff, up to and including a recommendation that this case be dismissed for failure to prosecute.
6. No later than 12 noon on Friday, October 13, 2023, counsel for Defendant shall email a copy of this Order to Plaintiff and shall call Plaintiff to read the contents of this Order. If Plaintiff does not answer the phone, Defendant shall leave a voicemail with the contents of this Order.

SO ORDERED.

Dated: New York, New York
October 12, 2023



STEWART D. AARON
United States Magistrate Judge